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6                   UNITED STATES DISTRICT COURT  
7                   DISTRICT OF NEVADA  
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9                   UNITED STATES OF AMERICA,                 )  
10                  Plaintiff,                                      )  
11                  vs.    )  
12                  CHESTER ARTHUR STILES,                 )  
13                  Defendant.                                    )  
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2:07-cr-0254-JCM-RJJ

REPORT & RECOMMENDATION  
OF UNITED STATES  
MAGISTRATE JUDGE  
(Defendant's Motion to Suppress #36)

15                  This matter was submitted to the undersigned Magistrate Judge on Defendant Chester  
16 Arthur Stiles Motion to Suppress (#36). The Court has considered the Defendant's Motion to  
17 Suppress (#36); the Government's Response (#40); and Defendant's Reply (#43). The Court  
18 conducted an evidentiary hearing, then granted the parties permission to file their closing  
19 arguments and any supplemental briefing in writing. The Government filed a Supplemental Brief  
20 (#48), which was followed by the Defendant's Supplemental Briefing (#50).

21   **BACKGROUND**

22                  On September 8, 2007, a videotape was delivered to the Nye County Sheriff's Office  
23 allegedly containing footage of Chester Arthur Stiles (Stiles) molesting and engaging in sexual acts  
24 with a 2 to 3-year old girl. On October 10, 2007, a federal grand jury indicted Stiles, charging him  
25 with one count of production of child pornography in violation of 18 U.S.C. § 2251(a).

26                  On October 15, 2007, Stiles was arrested during a routine traffic stop in Henderson, Nevada  
27 and transported to the Clark County Detention Center (CCDC). Stiles was not given *Miranda*  
28 warnings during his post-arrest transport to the CCDC. During transport, Stiles made potentially

incriminating statements to the transporting officer.

Upon arrival at the CCDC, Stiles was administratively processed. After he was processed, Stiles was placed in an interview room for questioning. Present in the interview room were two Las Vegas Metro Police Department officers as well as an FBI agent (Law Enforcement). Stiles was not advised of his *Miranda* rights prior to being placed in the room or at anytime during the interview. The interview was recorded and transcribed.<sup>1</sup>

At the outset of the interview, when asked how he would like to be addressed, Stiles stated that he did not want to talk without a lawyer. All three law enforcement witnesses testified that they understood this to be an unequivocal request for a lawyer. Despite the request, the recorded interview continued for approximately twelve (12) minutes. During the course of the recorded interview, Stiles made several potentially incriminating statements.

12 Subsequent to the recorded interview, as law enforcement officers were preparing to leave  
13 the interview room, Stiles inquired about the status and whereabouts of the car he was driving when  
14 arrested. The conversation was initiated by Stiles and was unprovoked by any words or action on  
15 the part of law enforcement. During the conversation, Stiles disclosed the location of certain of his  
16 personal belongings. He gave detailed directions to a bottle he had placed in the desert. The bottle  
17 contained items he requested that law enforcement retrieve and deliver, including a key to a storage  
18 facility where his possessions were stored.

19       Based on Stiles detailed directions, law enforcement located the bottle and applied for search  
20 warrants. Search warrants were issued for both the bottle and the storage facility. The search  
21 warrants were executed. The bottle contained, among other things, a key to the storage unit and  
22 several handwritten letters. *See* Ex. C attached to Def's. Mot. (#36). The storage unit contained six  
23 (6) digital video discs, twenty-one (21) compact discs, sixteen (16) VHS tapes, handwritten notes,  
24 and two images of adult female pornography with the photo of younger female taped over the face.  
25 Ex. C.

26 Stiles asks the court to suppress all statements made on October 15, 2008, in the CCDC

<sup>1</sup> The audio recording was admitted into evidence as Government's Exhibit 1 during the January 6, 2009, evidentiary hearing. The transcript of the interview was identified but not admitted.

1 interview room and all evidence obtained during the execution of search warrants for the storage  
2 facility and the bottle. Stiles argues that suppression is warranted because law enforcement failed  
3 to give him *Miranda* warnings prior to conducting the October 15, 2008, interview. Stiles argues  
4 further that the interview violated his Sixth Amendment rights because the government “deliberately  
5 elicited” information subsequent to his indictment without an attorney present. Finally, Stiles argues  
6 that the statements which formed the basis for the search warrants were derived from his statements  
7 during the interview and, therefore, the items obtained pursuant to the search warrants should also  
8 be suppressed as the “fruits” of the alleged constitutional violations.

9 As to the recorded interview, the Government concedes that Stiles was in custody and was  
10 not given *Miranda* warnings during his post-arrest transportation or at anytime during the interview  
11 at the CCDC. However, the Government contends that the interview at the CCDC did not amount  
12 to an interrogation, thereby obviating the need to give *Miranda* warnings. Additionally, the  
13 Government argues that it scrupulously honored Stiles invoked right, and that any communication  
14 was voluntarily initiated by Stiles, not law enforcement.

15 Further, the Government argues that it did not violate Stiles’ Sixth Amendment rights  
16 because, although the right to counsel attached on the date of indictment, Stiles had not invoked the  
17 right by hiring an attorney or requesting appointed counsel. Moreover, even if Stiles did invoke his  
18 Sixth Amendment right to counsel, the Government contends that it did not “deliberately elicit” any  
19 incriminating statements during the interview.

20 The Government makes three arguments in relation to the statements made by Stiles about  
21 the car, bottle, and storage facility subsequent to the recorded interview. First, the statements were  
22 made spontaneously by Stiles and not in response to any question or statement by law enforcement.  
23 Second, any connection between the statements made after the recorded interview is so attenuated  
24 from the initial illegality, if any, as to dissipate any taint. Finally, the Government argues that the  
25 evidence recovered from storage facility would have been inevitably discovered because law  
26 enforcement knew about the facility, knew that Stiles stored items inside the facility, and already had  
27 the facility under surveillance.

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## **DISCUSSION**

## 1. Miranda

The obligation to administer *Miranda* warnings attaches once a person is subject to “custodial interrogation.” *Miranda v. Arizona*, 384 U.S. 436, 445 (1966). Custody turns on whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. *U.S. v. Rodriguez-Preciado*, 399 F.3d 1118, 1127 (9th Cir. 2005) (citing *United States v. Kim*, 292 F.3d 969, 973 (9th Cir. 2002)). In addition to being in custody, the accused must also be subject to interrogation. *Rhode Island v. Innis*, 446 U.S. 291, 300 (1980). Not every question asked in a custodial setting constitutes interrogation. *U.S. v. Chen*, 439 F.3d 1037, 1040 (9th Cir. 2006) (citing *U.S. v. Booth*, 669 F.2d 1231, 1237 (9th Cir. 1982)). Interrogation means questioning or “its functional equivalent,” including “words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.” *Innis*, 446 U.S. 291 at 301.

15       Based on the record before the Court, there are three instances where Stiles  
16   communicated with law enforcement during his post-arrest transport and interview on October  
17   15, 2007: (1) during his transportation to the CCDC; (2) during a recorded interview with law  
18   enforcement; and (3) subsequent to the recorded interview. The Government concedes that Stiles  
19   was in custody at all times relevant to the motion.

20           **A. Statements Made During Transportation To The Clark County Detention**  
21           **Center**

22 After his arrest on October 15, 2007, Stiles was transported to the CCDC. He was not  
23 given *Miranda* warnings prior to being placed in the vehicle or at any point during transport.  
24 During the January 6, 2008 evidentiary hearing, the transporting officer testified that during the  
25 transportation Stiles made several unprovoked, spontaneous statements. The testimony was not  
26 disputed. A spontaneous statement does not require a *Miranda* warning. *Beaty v. Steward*, 303  
27 F.3d 975, 991 (9th Cir. 2002); see also *Cox v. Del Papa*, 542 F.3d 669, 675-76 (9th Cir. 2008).  
28 Accordingly, the Court finds that, although Stiles was in custody, the statements made during

1 transportation to the CCDC were not the product of interrogation. As such, there was no  
2 *Miranda* violation and all statements made by Stiles during his transportation to CCDC are  
3 admissible.

4 **B. Statements Made During The Recorded Custodial Interview At The Clark  
5 County Detention Center**

6 The gravamen of this dispute centers around the statements made by Stiles at the CCDC  
7 during a post-arrest interview with law enforcement. As relates to *Miranda*, the Government's  
8 position rests on whether Stiles was interrogated. If there was no interrogation, there was no  
9 need to give *Miranda* warnings. However, if the post-arrest interview was a custodial  
10 interrogation, the failure to give *Miranda* warnings requires suppression of the statements.

11 In its opinion in *Miranda v. Arizona*, 384 U.S. 436 (1966), the Supreme Court concluded  
12 that certain procedural safeguards are necessary in the context of custodial interrogation in order  
13 to protect a defendant's Fifth Amendment privilege against compulsory self-incrimination. *Innis*,  
14 446 U.S. at 297. "More specifically, the Court held that 'the prosecution may not use statements,  
15 whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant  
16 unless it demonstrates the use of procedural safeguards effective to secure the privilege against  
17 self-incrimination.'" *Id.* (quoting *Miranda*, 384 U.S. at 444). The Court referred to  
18 "interrogation" as actual "questioning initiated by law enforcement officers." *Miranda*, 384 U.S.  
19 at 444.

20 The Supreme Court has since expanded that definition, finding that the "goals of the  
21 *Miranda* safeguards could be effectuated if those safeguards extended not only to express  
22 questioning, but also to its "functional equivalent." *Arizona v. Mauro*, 481 U.S. 520, 526 (1987).  
23 In *Innis*, the Court defined the phrase "functional equivalent" of express questioning to include  
24 "any words or action on the part of the police (other than those normally attendant to arrest and  
25 custody) that the police should know are reasonably likely to elicit an incriminating response

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1 from the suspect.” *Innis*, 446 U.S. at 301.<sup>2</sup> “The latter portion of this definition focuses  
2 primarily upon the perceptions of the suspect, rather than the intent of the police. *Id.*

3 Accordingly, whether custodial questioning constitutes custodial interrogation is an  
4 objective inquiry, and the subjective intent of the police, though relevant, is not determinative  
5 because the focus is on the defendant's perceptions. *U.S. v. Chen*, 439 F.3d 1037, 1040 (9th Cir.  
6 2006) (citation omitted). "This focus reflects the fact that the *Miranda* safeguards were designed  
7 to vest a suspect in custody with an added measure of protection against coercive police  
8 practices, without regard to objective proof of the underlying intent of the police." *Innis*, 446  
9 U.S. at 301. Thus, the fact that a question is objective, or was not asked in an attempt to elicit  
10 evidence of crime, is insufficient for finding that the questioning is not an interrogation. *Booth*,  
11 669 F.2d at 1238. "Even a relatively innocuous question may, in light of the unusual  
12 susceptibility of a particular subject, be reasonably likely to elicit an incriminating response." *Id.*  
13 (citing *Innis*, 446 U.S. at 302 n. 8); *see also United States v. Henley*, 984 F.2d 1040, 1042 (9th  
14 Cir.1993). Ultimately "[t]he test is whether, under all the circumstances involved in a given case,  
15 the questions are 'reasonably likely to elicit an incriminating response from the suspect.'" *Chen*,  
16 439 F.3d at 1040 (quoting *Innis*, 446 U.S. at 301).

17       Turning to the facts of the present case, the Court finds that the recorded interview  
18 conducted at the CCDC qualifies as a custodial interrogation for purposes of *Miranda*. It is  
19 undisputed that Stiles was in custody. He had been arrested. He had been administratively  
20 processed. After processing, he was placed in an interview room. Present in the interview room  
21 were three law enforcement officers. During the evidentiary hearing, the lead investigator  
22 testified that the purpose of the interview was to *Mirandize* Stiles, question him and, ultimately,  
23 obtain a confession. In response to the first question regarding how he would like to be  
24 addressed, Stiles requested an attorney.

25 To the extent the government now contends the invocation was anticipatory and therefore

<sup>27</sup> “An incriminating response refers to ‘any response-whether inculpatory or exculpatory-that the prosecution may seek to introduce at trial.’” *United States v. Padilla*, 387 F.3d 1087, 1093 (9th Cir. 2004) (citing *Innis*, 446 U.S. at 301).

1 invalid, the argument is unpersuasive. Although the Ninth Circuit acknowledges that *Miranda*  
 2 rights do not apply "outside the context of custodial interrogation" it has not clearly defined the  
 3 parameters of a custodial context. *See United States v. Wright*, 962 F.2d 953 955 (9th Cir. 1992).  
 4 Other circuits have held that the invocation of *Miranda* rights is valid during custodial  
 5 interrogation or when such interrogation is imminent. *See, e.g., United States v. Rambo*, 365  
 6 F.3d 906, 909 (10th Cir. 2004) ("in order for a defendant to invoke his *Miranda* rights the  
 7 authorities must be conducting interrogation, or interrogation must be imminent") (internal  
 8 quotations omitted); *United States v. Grimes*, 142 F.3d 1342, 1348 (11th Cir. 1998) ("*Miranda*  
 9 rights may be invoked only during custodial interrogation or when interrogation is imminent").

10       Here, all law enforcement testified that they understood this to be an unequivocal request  
 11 for an attorney. Based on the circumstances, the Court finds that Stiles validly invoked his  
 12 *Miranda* right to counsel at the outset of a custodial interrogation.

13       When an accused has expressed "his desire to deal with the police only through counsel"  
 14 he "is not subject to further interrogation by the authorities until counsel has been made available  
 15 to him, unless the accused himself initiates further communication, exchanges, or conversations  
 16 with the police." *Edwards v. Arizona*, 451 U.S. 477, 484 (1981). The government argues that  
 17 once Stiles invoked his right to counsel, any designs on interrogation ceased and all  
 18 communication was initiated by Stiles.<sup>3</sup> The argument is unavailing.

19       The post-invocation conversation revolved indirectly around the facts of this case and  
 20 was initiated by law enforcement. Although law enforcement never inquired directly about the  
 21 case or any evidence it had in its possession, the recorded interview clearly shows a situation  
 22 where law enforcement would initiate conversation or keep a prior conversation alive by making  
 23 comments reasonably likely to elicit a response. For example, after invoking his right to an

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 25       <sup>3</sup> An accused "initiates" a conversation if he evinces "a willingness and a desire for a generalized  
 26 discussion about the investigation; [] not merely a necessary inquiry arising out of the incidents of the  
 27 custodial relationship." *Oregon v. Bradshaw*, 462 U.S. 1039, 1045-46 (1983). The courts consistently use  
 28 the words "communication, exchanges or conversations" to characterize valid post-initiation interrogations.  
*See, e.g., Edwards*, 451 U.S. at 485; *see also Bradshaw*, 462 U.S. at 1045 (implying that the initiated  
 discussion may be a "generalized discussion relating directly or indirectly to the investigation"). These  
 words suggest that it is entirely appropriate for the police to be actively engaged in a dialogue with a suspect  
 in these circumstances.

1 attorney, the law enforcement officer acknowledged the request and stated that “[w]e just wanted  
2 to offer you the opportunity to talk to us.” As is reasonably foreseeable, Stiles responded. Law  
3 enforcement then seized on his response to engage in further conversation. This pattern repeated  
4 itself for the duration of the twelve (12) minute recorded interview. It continued despite Stiles  
5 repeated requests for an attorney. It continued with no *Miranda* warnings. It continued in  
6 violation of *Edwards* “clear and unequivocal” guidelines to law enforcement. *See Desire v.*  
7 *Attorney General of California*, 969 F.2d 802, 804 (9th Cir. 1992) (quoting *Minnick v.*  
8 *Mississippi*, 498 U.S. 146, 151 (1990)).

9 Accordingly, based on the totality of the circumstances, the Court finds that the October  
10 15, 2007, recorded interview was a custodial interrogation requiring the prophylactic *Miranda*  
11 warnings. As the statements made during the recorded interview were taken in violation of the  
12 *Edwards* rule and without *Miranda* warnings, they are inadmissible.

13 **C. Statements Made After The Recorded Interview At The Clark County Detention  
14 Center**

15 Following the conclusion of the recorded interview, as the law enforcement personnel  
16 were preparing to leave the interview room, Stiles made several voluntary, unprovoked  
17 statements. He inquired regarding the whereabouts of the car in which he was arrested and the  
18 procedure for ensuring it was returned to its rightful owner. In response, a law enforcement  
19 officer informed Stiles of police procedures regarding vehicles taken under similar circumstances  
20 and asked if there was anything else he could do for him. In response to that question, Stiles  
21 requested that law enforcement retrieve certain items and deliver them to specified individuals.  
22 Stiles then gave detailed directions to a bottle he had placed in the desert containing the various  
23 items he wished law enforcement to retrieve and deliver to specified individuals. The bottle also  
24 contained the key to a storage facility where his possessions were stored—a facility law  
25 enforcement already had under surveillance.

26 Under *Edwards*, a defendant who initiates further communication, exchanges, or  
27 conversations with the police after invoking his right to an attorney may be subject to further  
28 interrogation. *Bradshaw*, 462 U.S. at 1044. However, before a defendant may be subjected to

1 further interrogation, “there must be a clear showing that the suspect himself initiates dialogue  
 2 with the authorities.” *Id.* Even if a conversation taking place after the accused has “expressed  
 3 his desire to deal with the police only through counsel” is initiated by the accused, where re-  
 4 interrogation follows, the prosecution bears the burden to show that subsequent events indicated  
 5 a waiver of the Fifth Amendment right to have counsel present during the interrogation. *Id.*

6 Here, the record in regard to these statements is clear: they were made subsequent to  
 7 custodial interrogation; were initiated by Stiles<sup>4</sup>; and were not the result of police interrogation.  
 8 Essentially, Stiles initiated a dialogue with the police in order to request that they run personal  
 9 errands for him. The record establishes that, even after the statements were made, the police did  
 10 not attempt to re-interrogate Stiles by inquiring directly or indirectly about the case. The police  
 11 simply listened and obliged. Because there was no interrogation following Stiles unprovoked  
 12 statements, the *Edwards* rule was not violated and the government is not obligated to show  
 13 waiver. *See Bradshaw*, 462 U.S. at 1044. Moreover, because there was no custodial  
 14 interrogation there was no need to give the *Miranda* warnings.

15 Accordingly, based on the record before it, the Court finds that Stiles statements which  
 16 led to incriminating physical evidence were voluntary, unprovoked, and not made during a  
 17 custodial interrogation. Moreover, Stiles was not subjected to any further interrogation as a  
 18 result of these statements. As such, under *Miranda*, the suppression of these statements, or any  
 19 evidence obtained as a result thereof, is unwarranted.

20 **2. The Sixth Amendment**

21 Stiles also argues that his Sixth Amendment right to counsel was violated. The Sixth  
 22 Amendment guarantees a criminal defendant “the right ... to have the Assistance of Counsel for  
 23 his defense.” U.S. Const. Amend. VI. The Sixth Amendment right to counsel attaches “at or  
 24 after the time that judicial proceedings have been initiated ... ‘whether by way of formal charge,  
 25 preliminary hearing, indictment, information, or arraignment.’” *Fellers v. United States*, 540 U.S.  
 26 519, 523 (2004) (internal citations and quotations omitted). “But attachment of the right alone

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 28 <sup>4</sup> See *supra.*, n. 3.

1 does not guarantee a defendant the assistance of counsel.” *United States v. Harrison*, 213 F.3d  
2 1206, 1209 (9th Cir. 2000). “A defendant must also invoke the Sixth Amendment right by hiring  
3 a lawyer or asking for appointed counsel.” *Id.* Attachment and invocation are distinct legal  
4 events. *Id.*; *Cf. Maine v. Moulton*, 474 U.S. 159, 170 (1985).

5 Once the right has attached and been invoked the government is obligated to refrain from  
6 the deliberate elicitation of information or the intentional creation of situations likely to induce  
7 an indicted defendant to make incriminating statements outside the presence of counsel. “The  
8 Government is guilty of ‘deliberately eliciting’ information if it intentionally creates a situation  
9 likely to induce an indicted defendant to make incriminating statements without counsel’s  
10 assistance.” *United States v. Kimball*, 884 F.2d 1274, 1278 (9th Cir. 1989) (citing *United States*  
11 *v. Henry*, 447 U.S. 264, 270-71 (1980)). Whether the government creates a situation likely to  
12 induce an indicted defendant to make incriminating statements is a question of fact.

13 **A. Statements Made During Transportation To The Clark County Detention  
14 Center**

15 The voluntary statements made by Stiles during his post-arrest transport to the CCDC  
16 were not taken in violation of the Sixth Amendment. The transporting officer made no attempt  
17 to elicit any information from Stiles during transport. Accordingly, the statements made by Stiles  
18 during transport are admissible.

19 **B. Statements Made During The Recorded Custodial Interview At The Clark  
20 County Detention Center**

21 Stiles statements made during the recorded custodial interrogation were taken in violation  
22 of *Miranda* and must be suppressed on that basis. Stiles also urges the Court to find these  
23 statements inadmissible because they were taken in violation of his Sixth Amendment right to  
24 counsel. Even assuming a Sixth Amendment violation, the more difficult question is the  
25 appropriate scope of relief to be afforded Stiles. Here, Stiles argues not only for the suppression  
26 of the statements made during the recorded interrogation, but also all evidence that can properly  
27 be designated the fruits of that conduct. According to Stiles, this includes his statements made to  
28 law enforcement personnel after the recorded custodial interrogation had concluded and the

1 physical evidence obtained as a result of these subsequent statements.

2       The Court agrees that the Constitution requires no less than the suppression of the  
3 statements taken in contravention of the Sixth Amendment. *See Massiah v. United States*, 377  
4 U.S. 201 (1964). Further, the Court agrees that a Sixth Amendment violation also requires  
5 suppression of all derivative evidence gleaned through exploitation of the government's  
6 wrongdoing. *United States v. Kimball*, 884 F.2d 1274, 1278-79 (9th Cir. 1989) (citations  
7 omitted); see also *Wong Sun v. United States*, 371 U.S. 471 (1963) (announcing a suppression  
8 rule for all "fruits of the poisonous tree"). However, this does not end the inquiry. There are  
9 three exceptions to the "fruit of the poisonous tree" doctrine which allow for admission of  
10 evidence derived from official misconduct: the "independent source" exception, the "attenuated  
11 basis" exception, and the "inevitable discovery" exception. *United States v. Ramirez-Sandoval*,  
12 872 F.2d 1392, 1396 (9th Cir. 1989).

13       The "attenuated basis" exception applies when the connection between the illegality and  
14 the challenged evidence has become sufficiently weak so as to dissipate the taint caused by the  
15 illegality. *Wong Sun v. United States*, 371 U.S. 471, 488 (1963) (noting that the question is  
16 "whether, granting establishment of the primary illegality, the evidence to which instant  
17 objection is made has been come at by exploitation of that illegality or instead by means  
18 sufficiently distinguishable to be purged of the primary taint"). Here, the record and testimony  
19 demonstrates that when the recorded interview was completed the defendant initiated a second,  
20 unrecorded voluntary conversation with law enforcement. As a result of the statements made  
21 during this conversation, law enforcement obtained incriminating evidence. *See supra*. at 8-9.

22       Even assuming the recorded statements were taken in violation of Stiles Sixth Amendment  
23 right to counsel, it cannot be said that the statements made during the second, unrecorded conversation  
24 were made because law enforcement exploited the prior illegality. To the contrary, the subsequent  
25 statements were made voluntarily, without police provocation, and outside the context of police  
26 questioning. Stiles volunteered the information during the course of requesting that law enforcement run  
27 personal errands for him. Accordingly, the Court finds that these voluntary, unprovoked statements,  
28 made after the recorded interview concluded, are so attenuated from the prior recorded statements as to

1 be purged of any taint.<sup>5</sup>

2 Because the statements which led to the discovery of incriminating evidence are attenuated, so  
3 too is the evidence obtained as a result of those statements. As such, the statements and physical  
4 evidence, which includes the contents of the bottle as well as the storage facility are properly admissible.  
5 Because the Court finds these statements and the evidence obtained as a result thereof are admissible  
6 under the “attenuation exception,” the Court does not reach the government’s “inevitable discovery”  
7 argument.

8 **CONCLUSION**

9 In conclusion, the record in this matter establishes: (1) the statements made by Stiles during  
10 transport did not violate the Fifth or Sixth Amendment; (2) the statements made by Stiles during the  
11 recorded interview were taken in violation of *Miranda* and the *Edwards* rule; (3) the statements made  
12 subsequent to the recorded interview did not violate *Miranda* or *Edwards* because they were unprovoked,  
13 voluntary, and not the produce of any police questioning or interrogation; and (4) even assuming the  
14 statements made during the recorded interview were also taken in violation of the Sixth Amendment, the  
15 statements made subsequent to the recorded interview are so attenuated from any illegality as to remove  
16 any taint.

17 **RECOMMENDATION**

18 Based on the foregoing and good cause appearing therefore,

19 IT IS THE RECOMMENDATION of the undersigned Magistrate Judge that the  
20 Defendant's Motion to Suppress (#36) be **GRANTED** as to the suppression of all statements made  
21 during the twelve (12) minute custodial interrogation.

22 IT IS FURTHER RECOMMENDED that all other requests be **DENIED**.

23 **NOTICE**

24 Pursuant to Local Rule IB 3-2 **any objection to this Report and Recommendation must be in**  
25 **writing and filed with the Clerk of the Court on or before March 30, 2009.** The Supreme Court has held  
26 that the courts of appeal may determine that an appeal has been waived due to the failure to file objections

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28 <sup>5</sup> To the extent the defendant seeks suppression of the statements and physical evidence as the illegal  
fruits of a *Miranda* or *Edwards* violation, neither the analysis or the result would change.

1 within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1)  
2 failure to file objections within the specified time and (2) failure to properly address and brief the  
3 objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues from  
4 the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley*  
5 *United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

6 DATED this 18th day of March, 2009.  
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9 ROBERT J. JOHNSTON  
10 United States Magistrate Judge  
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